

**AUDUBON OF FLORIDA
ENVIRONMENTAL AND LAND USE LAW CENTER
NATIONAL AUDUBON SOCIETY
NATIONAL PARKS CONSERVATION ASSOCIATION
NATURAL RESOURCES DEFENSE COUNCIL
THE EVERGLADES FOUNDATION
THE EVERGLADES TRUST
WORLD WILDLIFE FUND**

Position Statement on Assurances for the Everglades

June 28, 2001

The above listed organizations are pleased to submit the following statement on the content and execution of the Federal/State Agreement and the Programmatic Regulations pursuant to WRDA 2000. These elements of the law form the basis of assurances that the hydrologic, ecological and biological restoration objectives of the Comprehensive Everglades Restoration Plan (CERP) will be achieved, and therefore are of tremendous interest to us. We applaud efforts to reach out to stakeholders and the public during this early phase of the Programmatic Regulations and Agreement development process and appreciate the opportunity to offer the following comments. Please recognize that our organizations intend that these comments serve as initial thoughts on the scope of the important regulatory tools and we intend to supplement these comments in the future.

Past water management activities in South Florida, geared predominantly toward satisfying urban and agricultural demands at the expense of the natural environment, have resulted in environmental devastation and an unsustainable future for South Florida. As a result, the CERP is intended to create a new balance to satisfy the needs of the natural system, while also providing for urban and agricultural needs. For example, according to the unanimous consensus of Governor's Commission for a Sustainable South Florida, "assurances are needed that, once restored, South Florida's natural environment will not again be negatively impacted by water management activities" (Restudy Plan Report, January 20, 1999, page 53). The Federal/State Agreement and the Programmatic Regulations portions of the assurances provisions set forth in WRDA 2000 are intended, among other things, to provide this assurance.

The Federal/State Agreement

Congress intended, and Everglades restoration absolutely requires, that CERP implementation and the State of Florida's consumptive use and other relevant permitting processes (e.g., environmental resource permits) be coordinated in a manner that will ensure that CERP's hydrologic, ecological and biological restoration goals are achieved. The Federal/State Agreement pursuant to WRDA 2000 is a key piece of this coordination and, accordingly, must be executed as soon as possible. The Agreement is intended to ensure:

"that water made available by each project in the Plan shall not be permitted for a consumptive use or otherwise made unavailable by the State until such time as sufficient reservations of water for the restoration of the natural system are made under State law in accordance with the project implementation report for that project and consistent with the Plan."

To achieve its intended purpose, the Agreement must include adequate verification procedures, such as requirements that non-CERP processes that make water "unavailable" (e.g., proposals for consumptive use permits, or requests for additional or new flood protection) incorporate procedures that provide adequate demonstration that the proposed action (a) will be consistent with the programmatic regulations promulgated pursuant to WRDA 2000 and the WRDA 2000 "savings clause," and (b) does not make water potentially subject to CERP unavailable to future CERP projects that may utilize such water. Also, the Agreement must continue to assure that the 245,000 acre-feet of additional annual water deliveries potentially necessary for the southern Everglades are protected. Finally, until the Federal/State Agreement is executed, it is imperative that the South Florida Water Management District not enter into any additional rulemaking procedures related to CERP. Coordination with the partner federal agencies is essential to ensure efficient and successful CERP implementation.

Programmatic Regulations

The Programmatic Regulations must embody the federal right and responsibility to oversee the federal investment in the CERP. In addition, the Programmatic Regulations will be an important part of ensuring that the hydrologic, ecological and biological restoration objectives of CERP drive its implementation process, rather than the reverse.

In order to meet the legal mandate that the Programmatic Regulations "ensure that the goals and purposes of the plan are achieved," the regulations must include the following elements:

- (a) "Intent" language that the CERP will be implemented in a way that strives toward an overall goal of achieving approximately 50% of the intended hydrologic, ecological and biological performance for the natural system by 2010. We believe that this ten-year performance marker, while ambitious in a few areas for certain types of performance, is attainable, and therefore reasonable to expect from the CERP process. Furthermore, we believe that setting such an objective will fuel public confidence in CERP and focus agency efforts in a meaningful and powerful way. In addition, setting an overall marker in a "statement of purposes" or intent section of the regulations will provide valuable guidance for the development of interim restoration goals (see below). Finally, and critically, such an objective will drive further improvements of the CERP framework via adaptive management, including by driving a process for attainment of an even distribution of restoration benefits across the natural system (see below).
- (b) "Intent" language that seeks to meet the expectation that 80% of "new" water produced by the CERP will be available to meet restoration goals.
- (c) Quantitative and measurable restoration goals, including quantitative and measurable interim restoration goals. These restoration goals should be developed consistent with the intent expressed in (a) and (b) above, and should take advantage of every opportunity to meet that intent on an interim basis consistent with the Programmatic Regulations, the CERP and the Savings Clause in WRDA 2000. We believe that this approach to developing interim goals will provide important guidance to the state water reservation process. The Programmatic Regulations should specifically include an initial set of quantitative and measurable restoration targets, along with a process for their further refinement, including outside, independent scientific review. Finally, each PIR and component operating manual should include an analysis and statement of consistency with these restoration targets.
- (d) Adaptive management provisions which, among other things, (i) ensure expedient development of CERP improvements for areas of the natural system in which initial anticipated performance falls short of the "50% by 2010" performance marker, and (ii) ensure ongoing development of CERP improvements as necessary to achieve restoration targets.
- (e) Provisions for implementation of WRDA 2000's "savings clause," including requirements that each PIR include an analysis and statement of consistency with the savings clause, including modeling showing no impact on current benefits to natural system (i.e., fixed base condition).
- (f) Provisions for full and comprehensive integration of the WRDA 2000 outside science review panel into the CERP planning, implementation, and adaptive management processes.

The Federal/State Agreement and the Programmatic Regulations are complex provisions that exemplify the unique level of cooperation that CERP requires of the federal government and the State of Florida. Understanding and appropriately implementing these provisions present formidable challenges to all of us. Our thinking on these issues continues to evolve, and we look forward to having a continuous and open dialog.